S.B.Civil Writ Petition No.7553/2007
Anil Kumar Saraswat
vs.
Chandra Shekhar Paliwal & ors.

Date of order: 21.11.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr. Anurag shukla for the petitioner.

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Heard learned counsel for the petitioner.

The petitioner is aggrieved against the order of the trial court dated 23.8.2007 by which the trial court allowed the non-petitioner-plaintiffs to amend the suit, by which the plaintiffs sought incorporation of certain facts for seeking relief of demolition of new construction raised by the defendant during pendency of the suit.

The learned counsel for the petitioner vehemently submitted that the plaintiffs originally filed the suit only on the ground that the defendant no.1 be restrained from raising any construction within 5 ft. set-back area in the western side of the property. In view of the above stand of the plaintiffs, as taken in the plaint originally, the plaintiffs cannot raise any objection against the defendant's any other construction. It is submitted that the defendant has raised the construction after leaving 5 ft. set-back area in his own plot. Emphasis of the learned counsel for the petitioner-defendant is that he has complied with the wish of the plaintiffs as well as the order passed by the trial court in injunction application and left 5 ft. set-back area. Now

the petitioner cannot be asked to remove more construction.

It appears that the petitioner has case that he has left 5 ft. set-back area, as sought by the plaintiffs but by amendment, the plaintiffs-respondents want to challenge the petitioner-defendant's new construction despite the fact that the petitioner believed that he could raise construction after leaving 5 ft. set-back area.

Since the trial court has only allowed the amendment in the plaint and the amendment was sought only on the ground that the during the pendency of the suit, the defendant has raised certain constructions which according to the plaintiffs, were not permissible and which may cause obstruction of air and light to the non-petitioner-plaintiffs and the plaintiffs' contention is that certain construction has been raised by the defendant on the wall of the plaintiffs, therefore, the amendment was sought only in the light of the alleged subsequent events. The trial court merely allowed the amendment of the plaint and the defendant has every right to prove that he has left 5 ft. set-back area and also has had right to raise construction which he has raised and the plaintiffs have no case. It cannot be said that allowing the amendment of the plaint to the plaintiffs on the basis of the subsequent events, the trial court has committed any error of law.

In view of the above, I do not find any merit in the writ petition and the same is hereby dismissed.

(PRAKASH TATIA),J.

mlt.